**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-289
Administrative Law Judge Division
September 8, 2014
10/16/2014 Item 6

# R E S O L U T I O N

RESOLUTION ALJ-289. Resolves the Appeal from Revocation of Hyros Corporation's (dba Platinum Style Limousine Service) Charter-Party Carrier Permit (PSG-19185, 3754).

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## SUMMARY

This Resolution resolves the appeal from revocation of Hyros Corporation's (dba Platinum Style Limousine Service) (hereafter, Hyros or Appellant) Charter-Party Carrier Permit, issued on April 15, 2014, by the California Public Utilities Commission's Safety and Enforcement Division (SED) pursuant to its authority under Pub. Util. Code § 5387(c) and Resolution TL-19099. SED permanently revoked Appellant's authority to operate under Pub. Util. Code § 5387(c)(1)(E) on claims that Appellant: 1) Knowingly employed a driver who did not possess the appropriate class driver's license while operating a bus in violation of California Vehicle Code (CVC) § 14606 and; 2) knowingly employed a driver without the required certificate to drive a school bus in violation of CVC § 545. SED issued the revocation predicated upon reports from the California Highway Patrol, Enforcement and Planning Division (CHP) dated September 30, 2013 and January 27, 2014.

At the Appeal Hearing neither the CHP nor the SED demonstrated that Appellant knowingly employed a driver who did not possess the appropriate class driver's license while operating a bus. Specifically, while it appears Appellant was not enrolled in the pull notice program and therefore could not demonstrate that its driver possessed the requisite license during the inspection, evidence presented at hearings demonstrates that Appellant's driver did possess the requisite license at the time of the charter. Similarly, neither the CHP nor SED demonstrated that Appellant improperly drove a school bus at the time of the CVC § 545 citation. Specifically, neither the CHP nor SED

showed: (1) That the charter was to or from a school; or (2) that the charter was to or from a school activity. Because the charter giving rise to the revocation did not involve a school bus, as defined by CVC § 545, we find that the revocation was erroneously issued.

As the grounds for the revocation by SED was erroneous, it is hereby rescinded.

## BACKGROUND

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, *et seq.*). Under Pub. Util. Code § 5387(c)(1)(E), a charter-party carrier shall have its authority to operate permanently revoked by the Commission if it commits any of several enumerated acts.[1] The first violation alleged here, operating a bus without the required medical certification in violation of Vehicle Code section 12804.9, falls squarely within the purview of Pub. Util. Code § 5387(c)(1)(E). The second violation alleged requires reference to two other statutes for determination of which "required certificate" SED determined was required of the driver who conducted the charter that gave rise to the revocation. First, CVC § 545 defines a "school bus" as "a motor vehicle … used … for the transportation of any school pupil at or below the 12th grade level to or from a public or private school, or to or from public or private school activities." Driving a school bus without the appropriate class of vehicle endorsement is a violation of CVC § 12517(a) and grounds for license revocation under Pub. Util. Code § 5387(c)(1)(E).[2]

Resolution TL-19099 provides the current procedural framework for the permanent revocation of a charter-party carrier's operating authority pursuant to Pub. Util. Code § 5387, *et seq.*[3]

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[1] Pub.Util. Code § 5387(c)(1) provides that a charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the commission or be permanently barred from receiving a permit or certificate from the commission where it: . .

> (E) Knowingly employs a bus driver who does not have …the required certificate to drive a bus.

[2] CVC § 12517(a)(1) provides that: "A person may not operate a school bus while transporting pupils unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for school bus and passenger transportation."

[3] Pub. Util. Code § 5387.3 provides:

> a) A charter-party carrier described in subdivision (c) of Section 5387, that has received a notice of …revocation of its permit to operate, may submit to the commission, within 15 days after the mailing of the notice, a written request for a hearing. The charter-party carrier shall

**REVOCATION**

By letter dated April 15, 2014, SED revoked Hyros Corporation's charter-party carrier permit. SED's revocation letter stated that it had received reports dated September 30, 2013, and January 27, 2014, from the CHP's Southern Division Motor Carrier Safety Unit. Among the violations cited in the September 30, 2013 report was the use of a driver (Gevorg Altikulandzhyan) who allegedly did not possess the appropriate medical certificate while operating a bus in violation of CVC § 14606.[4] Among the violations cited in the January 27, 2014 report was the use of a driver (Artur Mkrtumyan) on a school activity trip on October 19, 2013, who allegedly did not possess a driver's license with the required certificate.

**APPEAL**

Appellant filed a timely appeal of SED's April 15, 2014 revocation letter. First, Appellant claims that it did not violate Pub. Util. Code § 5387(c)(1)(E) by hiring a bus driver who did not possess the appropriate driver's license certificate while operating a

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furnish a copy of the request to the Department of the California Highway Patrol at the same time that it makes its request for a hearing.

b) Upon receipt by the commission of the hearing request, the commission shall hold a hearing within a reasonable time, not to exceed 21 days, and may appoint a hearing officer to conduct the hearing. At the hearing, the burden of proof is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387.

c) The revocation of the permit to operate may only be rescinded by the hearing officer if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387, and that the basis of the revocation resulted from factual error.

[4] California Vehicle Code § 14606 provides:

a) No person shall employ or hire any person to drive a motor vehicle nor shall he knowingly permit or authorize the driving of a motor vehicle, owned by him or her or under his or her control, upon the highways by any person unless the person is then licensed for the appropriate class of vehicle to be driven.

b) Whenever any person employs or hires any person, including a subhauler, to drive a class A or class B vehicle, the employer shall ascertain that the person has in his or her possession a medical certificate as provided in subdivision (c) of Section 12804.9 which has been issued within two years prior to the date of the person's employment or hiring.

bus. Specifically, Appellant contends that the driver at issue held the requisite medical examination certification at all relevant times. Second, Appellant claims that it did not violate Pub. Util. Code § 5387(c)(1)(E) because the charter giving rise to the revocation did not involve a school bus and therefore the driver was not required to have a school bus certificate to conduct the charter.

Appellant's Appeal from Revocation was timely received on April 30, 2014, and the Commission granted the request for an Appeal Hearing. The Appeal Hearing took place on May 19, 2014. Appellant Hyros and SED appeared as parties.

The burden of proof in an Appeal from Revocation is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387. (Pub. Util. Code § 5387.3(b)) The revocation of the permit to operate may only be rescinded if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387 and that the basis of the revocation resulted from a factual error.
(Pub. Util. Code § 5387.3(c))

## RESOLUTION OF THE APPEALS

### The September 30, 2013 violation

It is undisputed that Gevorg Altikulandzhyan was a driver for Hyros at all times relevant to this appeal. In addition SED points out that "[d]river Gevorg Altikulandzhyan … is not enrolled in the Pull Notice system." While Appellant's apparent failure to enroll drivers in the Department of Motor Vehicles Pull Notice System may constitute a violation of CVC section 1808.1(b), it is not relevant to this proceeding.[5] Rather, the question now at issue is whether the driver had a valid medical examination certification at the time of the CHP inspection.

The September 30, 2013 CHP report notes that: "A California Law Enforcement Telecommunications System (CLETS) inquiry shows his license is not valid for commercial operation" because the required medical examination certificate appears to have expired. At the hearing SED's witness from the CHP confirmed that a CLETS report, indicates that Mr. Altikulandzhyan's medical exam expired on June 29, 2013, and that (in the absence of a pull notice document) this served as the basis for the assertion that the Hyros driver did not have the required medical examination certificate.[6]

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[5] Failure to enroll drivers in the required Pull Notice Program is not a violation within the purview of Pub. Util. Code § 5387(c)(1)(E) which is the statutory basis for this revocation proceeding.

[6] SED Exhibit 18, at 3 and 11. CLETS is a DMV record for law enforcement use only.

Appellants assert that the driver is and was in possession of a valid medical examination certificate and offered proof in the form of a document obtained from the DMV on September 30, 2013.[7] This document shows that Mr. Altikulandzhyan has a medical certificate that expires on May 28, 2015. Rather than contest the validity of this document, SED appears to argue that a violation of Pub. Util. Code § 5387(c)(1)(E) exists because proof of possession of the required certification was not provided at the time of the inspection. We disagree. Pub. Util. Code § 5387(c)(1)(E) which gave rise to this action provides for revocation where the employer "[k]nowingly employs a bus driver who does not have … the required certificate to drive a bus." Nothing in Pub. Util. Code § 5387(c)(1)(E) requires the employer to have proof of certification in its immediate possession.

Because the DMV requires renewal of medical certificates every two years it appears the aforementioned medical certificate was obtained on or about May 28, 2013.[8] Thus, rather than obtain the required certificate after the violation was alleged on September 30, 2013, Appellant's evidence shows that the certification was obtained prior to expiration of the previous certificate.

While we cannot positively discern which party's DMV report is correct, we need not do so. As noted above, Pub. Util. Code § 5387(c)(1)(E) upon which this revocation was based places the burden of proof on the appellant to show that the revocation was the result of error or mistake of fact. If the CLETS report is wrong, there was no violation of CVC 14606; if Appellant's DMV report is wrong it provides a persuasive argument that Appellant did not knowingly permit or authorize the driving of a motor vehicle by a driver who did not possess the appropriate class driver's license while operating a bus. This is especially true where, as is the case here, the document giving rise to the claimed violation (the CLETS) was unavailable to Appellant.

Having introduced evidence of mistake, apparently on the part of the DMV, Appellant has met its burden of proof and revocation for violation of CVC § 14606 should be rescinded.

**The October 19, 2013 violation**

It is undisputed that on October 19, 2013, driver Artur Mkrtumyam did a transportation job in the Los Angeles area for Hyros. It is also undisputed that although driver Artur

[7] Hyros Exhibit 3.

[8] SED's CHP witness confirmed that DMV medical certificates are valid for a period of two years; this is consistent with information found on the DMV website.

Mkrtumyam was properly licensed to drive a charter bus he was not properly licensed to drive a school bus.

Hyros' appeal asserts that the citation is in error because Mr. Mkrtumyam was not driving a charter that required a school bus endorsement. Specifically, Hyros argues that: 1) A school bus endorsement was not required because the trip was not to or from a school; and 2) a school bus endorsement was not required because the trip was not to or from a school activity.

Uncontested evidence produced at hearings shows that the trip at issue was contracted for by a private individual, that it originated at a residence (rather than a school) and that the trip at issue ended at In-N-Out Burger, a non-school location. Therefore, the sole issue presented here is whether the trip at issue was a school activity within the meaning of Vehicle Code § 545.

At hearings SED made CHP Motor Carrier Specialist Tom Spencer available for examination. SED's witness' testimony is clear; he believes, but never offered any adequate explanation, in the September 30, 2013 letter, his responses to examination by Hyros, or in re-direct by SED counsel, other than his opinion, that the "homecoming" notation on the way-bill is sufficient to establish that the trip was a school activity within the meaning of Vehicle Code § 545.[9]

Hyros argues that a homecoming is not the type of event California law defines as being a "school activity." Citing *Patterson v. Sacramento City Unified School Dist*. (2007) 155 Cal.App.4th 821, *Castro v. Los Angeles Bd. of Education* (1976) 54 Cal.App.3rd 232, and *Wolfe v. Dublin Unified School Dist*. (1997) 56 Cal.App.4th 126, Hyros argues that California courts have defined an off-campus school activity as one "that requires attendance and for which attendance credit may be given." (*Patterson* at 830.) According to Hyros the homecoming trip at issue does not fall within this definition of a "school activity."

In its Reply Brief, SED argues that the cases cited by Hyros are off-point because they interpret the phrase "school-sponsored activity" as found in Education Code §§ 44808 and 87706, rather than "school activity" which is used in CVC § 14606 and Education Code § 82321.[10] According to SED "the law does not qualify the definition of 'public or

[9] It appears the notation "homecoming" was written on the Hyros way-bill by a Hyros employee. (*See* SED Exh. 17 at 27.) There is no interpretation of this term on the way-bill and no other reference to a homecoming in the record.

[10] In relevant part, Education Code §§ 44808 and 87706 provide that … "no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such

private school activit[y]' at all." In the absence of a legal definition, on policy grounds, SED urges a broad definition of school activity; one that includes "homecoming" and does not require that the activity be authorized by a school or attended by a school official. (SED Reply Brief at 3-4.)

Consistent with the general rules of statutory interpretation code sections should be read so as to avoid conflict both internally, and with each other. With this in mind we are hesitant to define "school activity" as ubiquitously as SED urges. Instead, again as directed by the rules of statutory interpretation, we look to the plain language and generally accepted meaning of the term "school activity" as used in CVC § 14606 and Education Code § 82321. Thus, the relevant inquiry under CVC § 14606 and Education Code § 82321 must go to what connection, if any, the school has to the event at issue. While we need not find that the school sponsored the event, as required by Education Code §§ 44808 and 87706, at a minimum CVC § 545 requires a determination that the activity at issue has some nexus to a school and is not simply an activity undertaken by a group of school-aged individuals.[11]

Appellant has established that a private party booked the trip. In contrast SED's witness states that he believes some unknown individual was referring to a school activity when they wrote "Homecoming" on the way-bill. Other than this opinion, there is nothing to suggest that the trip was organized, attended by, or supervised by the school or its staff. Indeed, there is nothing in the record to suggest that any school was in any way connected to the trip. Based on the record before us we conclude that the trip at issue was not a school activity within the meaning of CVC § 545 and Appellant has met its burden of proof on this issue.

## SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (*See*, for example, Pub. Util. Code §§ 451, 5382, and 5387.) We are mindful that the statutory scheme under which the revocation in this case arises is intended to secure the safety of charter-party carrier passengers.

## CONCLUSION

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district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances. (*Emphasis added.*)

[11] Absent some involvement by the school, we can no more deem the vehicle used to go to homecoming a school bus than we can call the car used to drop kids off at a house party or the municipal bus taken by students to go back to school shopping at the mall school buses.

Based on the evidence presented at the Appeal Hearing we conclude that Appellant did not knowingly permit or authorize the driving of a motor vehicle by a driver who did not possess the appropriate class driver's license while operating a bus as alleged in the September 30, 2013 report. We further conclude that the charter referenced in the October 19, 2013 report was not a school bus charter within the meaning of CVC § 545. Consequently, we find no violation of Pub. Util. Code § 5387(c)(1)(E) occurred and the revocation was erroneous. Therefore the revocation is rescinded.

## COMMENTS

The draft resolution of the ALJ Division in this matter was mailed in accordance with Section 311 of the Public Utilities Code and Rule 14.2(c) of the Commission's Rules of Practice and Procedure. No comments were filed.

## FINDINGS OF FACT

1. SED revoked Appellant's charter-party carrier permit based on a violation listed in the September 30, 2013 CHP report claiming a driver who did not possess the appropriate medical examination certification was used to drive a bus on a charter trip.
2. SED revoked Appellant's charter-party carrier permit based on a violation listed in the January 27, 2014 CHP report claiming a driver was used on a school activity trip who did not possess a driver's license with the required certificate.
3. A CLETS report dated September 30, 2013 indicates that Hyros driver Altikulandzhyan's medical examination certification expired on June 29, 2013.
4. Documents obtained from the DMV show that Hyros driver Altikulandzhyan has a medical certificate that expires on May 28, 2015.
5. Hyros driver Altikulandzhyan's medical examination certificate was obtained on or about May 28, 2013.
6. Appellant did not knowingly permit or authorize the driving of a motor vehicle by a driver who did not possess the appropriate class driver's license while operating a bus.
7. Hyros driver Mkrtumyam was properly licensed to drive a charter bus, but was not licensed to drive a school bus on October 19, 2013.
8. The October 19, 2013 trip was contracted for by a private individual.
9. The October 19, 2013 trip originated at a residence rather than a school.

10. The October 19, 2013 trip ended at a non-school location.

11. There was no nexus established between the Homecoming trip identified in the Hyros way-bill and any school.

**CONCLUSIONS OF LAW**

1. Pub. Util. Code § 5387(c)(1)(E) requires permanent revocation of a charter-party carrier's operating authority if the carrier knowingly employs a bus driver who does not have the required certificate to drive a bus.

2. Pub. Util. Code § 5387(c)(1)(E) requires permanent revocation of a charter-party carrier's operating authority if the carrier knowingly employs a bus driver who does not have the required certificate to drive a school bus.

3. Appellant filed a timely appeal of SED's April 15, 2014 revocation letter.

4. DMV medical examination certificate renewals are valid for a period of two years from the date of issue.

5. CVC § 545 does not qualify the definition of "public or private school activity."

6. A "school activity" within the meaning of CVC § 545 must have some nexus to a school.

7. The October 19, 2013 charter was not a school activity within the meaning of CVC § 545.

8. SED erred in revoking Appellant's operating authority for knowingly permitting or authorizing the driving of a motor vehicle by a driver who did not possess the appropriate class driver's license while operating a bus because DMV reports confirm that the driver had the requisite certificates and license.

9. SED erred in revoking Appellant's operating authority for operating a school bus without the requisite license because the transport at issue did not involve a school bus as defined by CVC § 545.

10. Appellant met its burden of proof and showed that the revocation of its authority was based on factual error.

11. This Resolution is consistent with the Commission's continuing safety oversight and enforcement in regulation of this charter-party carrier.

**THEREFORE, IT IS ORDERED** that the revocation of Hyros Corporation's (dba "Platinum Style Limousine Service" charter-party carrier permit (PSG-19185, 3754) is rescinded. It is hereby reinstated.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

**INFORMATION REGARDING SERVICE**

I have provided notification of the foregoing Draft Resolution ALJ-289 to the electronic mail addresses on the attached service lists. I have served a Notice of Availability of the foregoing Draft Resolution ALJ-289 by U.S. mail on those persons on the attached service lists that do not have e-mail address.

Dated September 8, 2014, at San Francisco, California.

/s/ SHONTÀ BRYANT-FLOYD

Shontà Bryant-Floyd

**SERVICE LIST**

**REVOCATION APPEAL - FILE PSG 19185; CASE NO. PSG 3754,**
**HYROS CORPORATION DBA PLATINUM STYLE LIMOUSINE SERVICE**

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**REVOCATION APPEAL - FILE PSG 19185; CASE NO. PSG 3754,**
**HYROS CORPORATION DBA PLATINUM STYLE LIMOUSINE SERVICE**

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**REVOCATION APPEAL - FILE PSG 19185; CASE NO. PSG 3754,**
**HYROS CORPORATION DBA PLATINUM STYLE LIMOUSINE SERVICE**

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